to include residents who are outside the state,[12] and a few squarely decide that jurisdiction can be acquired over residents in no other way than over non-residents.[13] In accord with this view is a recent decision declaring unconstitutional a statute which gave personal jurisdiction over residents of the state who were personally served outside its territory. *Raher* v. *Raher*, 129 N. W. 494 (Ia.). These cases illustrate the modern tendency of the law to emphasize the importance of the territorial at the expense of the personal relation between the individual and the state, though many personal duties to the state are still recognized.[14] This tendency is doubtless sound; but it is submitted that the personal relation is still potent enough to enable the state to stipulate by what method its citizens or residents,[15] even when temporarily outside the territory, should become amenable to the orders of its courts, and that constitutional requirements are satisfied by providing for some reasonable form of notice. This view seems to be supported by the weight of authority, it being generally held that any reasonable form of substituted service gives personal jurisdiction over domestic corporations[16] and residents[17] of the state, whether they are within its territory or outside.

CONTRIBUTION BETWEEN CO-SURETIES ON PARTIALLY CONCURRENT OBLIGATIONS. — Stated broadly, the equitable[1] doctrine of contribution is, that when one person has discharged an obligation, which another had likewise assumed, he is entitled to be reimbursed proportionably to the risk assumed by each.[2] The application of this rule where the obligations are coextensive presents a simple problem in arithmetic.[3] But where the two instruments are only partially concurrent a more difficult question is presented, involving a determination of what portion of the broader obligation is applicable to the common risk.

The cases dealing with this problem may be divided into two classes: first, where the only element of loss is one for which both sureties are

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[12] See Pennoyer *v.* Neff, *supra.*

[13] Moss *v.* Fitch, 212 Mo. 484; De la Montanya *v.* De la Montanya, 112 Cal. 101; Smith *v.* Grady, 68 Wis. 215.

[14] See SALMOND, JURISPRUDENCE, 195.

[15] In this respect no distinction is drawn between citizens and domiciled residents. See Huntley *v.* Baker, 33 Hun (N. Y.) 578.

[16] Clearwater Mercantile Co. *v.* Roberts, etc. Shoe Co., 51 Fla. 176; Continental Nat. Bank *v.* Thurber, 74 Hun (N. Y.) 632.

[17] Harryman *v.* Roberts, 52 Md. 64, 76; Henderson *v.* Staniford, 105 Mass. 504; Huntley *v.* Baker, *supra;* Ouseley *v.* Lehigh Valley Trust & Safe-Deposit Co., 84 Fed. 602; Douglas *v.* Forrest, 4 Bing. 686; Becquet *v.* MacCarthy, 2 B. & Ad. 951, 958. As to what is not reasonable notice, see Bardwell *v.* Collins, 44 Minn. 97. The position taken in the principal case that a distinction is to be drawn between actual service outside the state and service by leaving at the defendant's residence, in favor of the latter, seems untenable. See Anheuser-Busch Brewing Assn. *v.* Peterson, 41 Neb. 897.

[1] See AMES, CASES ON SURETYSHIP, 537, n. 1.

[2] Armitage *v.* Pulver, 37 N. Y. 494; Thurston *v.* Koch, 4 Dall. (U. S.) 348. See also Deering *v.* The Earl of Winchelsea, 2 B. & P. 270; Pendlebury *v.* Walker, 4 Y. & C. 424, 441.

[3] Citizens Ins. Co. *v.* Hoffman, 128 Ind. 370; Farmers' Feed Co. *v.* Scottish Union Ins. Co., 173 N. Y. 241.

liable, and second, where a portion of the loss is covered by both obligations and the remainder must be borne by one alone. The decisions in both classes, are confined almost exclusively to the adjustment of loss between so-called "specific" and "blanket" fire policies,[4] containing a *pro ratâ* clause intended to effect without circuity of action the result produced by contribution.[5] An examination of the second class of cases discloses a hopeless confusion,[6] in which can be discovered no definite principle other than a desire to give the insured the fullest indemnity.[7] In the first class, it is held that the amount insured by the blanket policy is the greatest sum for which it would be liable, in the event of a total loss of the property covered by the specific policy.[8] This method of apportionment seems theoretically correct, in view of the principle that it is the hazard assumed by each insurer that determines the ratio of contribution.

The applicability of this rule to fidelity insurance [9] is denied in the recent case of *American Surety Co.* v. *Wrightson*, 103 L. T. R. 663 (Eng., K. B. Div., Nov. 15, 1910). The plaintiff had guaranteed a bank against loss up to $2500 by the dishonesty of a certain employee. The defendant in a general policy of £40,000 insured, among other things,[10] against loss from the same source. The employee misappropriated $2680. In the suit for contribution, it was held that the proper ratio is as 2500 is to 2680. The decision is a departure from the equitable principle, in that the proportion is made to depend upon the loss rather than upon the initial undertaking. Surely the greater scope of the blanket policy furnishes no valid reason for applying a different rule. Every policy is a blanket policy in so far as it partially insures a certain subject matter, any portion of which may be separately insured by a smaller policy.

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[4] Cherry *v.* Wilson, 78 N. C. 164; Burnett *v.* Millsaps, 59 Miss. 333. In these cases, both of the second class, the question of apportionment between co-sureties on a sheriff's bond was presented. The court held in both cases that the common loss should be divided in half.

[5] See Cromie *v.* Kentucky & Louisville Mutual Ins. Co., 15 B. Mon. (Ky.) 432; Howard Ins. Co. of N. Y. *v.* Scribner, 5 Hill (N. Y.) 298, 301.

[6] It has been held that this is not a case of concurrent insurance and no question of apportionment is involved. Meigs *v.* Insurance Co. of North America, 205 Pa. St. 378. *Contra*, W.-H. Coffee Co. *v.* Merchants', etc. Ins. Co., 110 Iowa 423. Sometimes the policy is apportioned among the various items insured proportionably to their value. Chandler *v.* Ins. Co. of North America, 70 Vt. 562. The apportionment has also been based on the losses on the different parcels. Mayer *v.* American Ins. Co., 2 N. Y. Supp. 227. According to the so-called Cromie rule, the general policy pays first the loss on property not doubly insured. See Cromie *v.* Kentucky & Louisville Mutual Ins. Co., *supra*. With this last may be contrasted the "gradual reduction" rule, in which the first payment is made on the item suffering the greatest loss. Schmaelze *v.* London & Liverpool Fire Ins. Co., 75 Conn. 397. See RICHARDS, INSURANCE LAW, 440, n. 4; GRISWOLD, FIRE UNDERWRITERS' TEXT-BOOK, 661–685.

[7] Angebrodt & Barth *v.* Delaware Mutual Ins. Co., 31 Mo. 593; Ogden *v.* East River Ins. Co., 50 N. Y. 388, 391.

[8] If the value of the specific thing is greater than the blanket policy, the full amount pro-rates with the smaller policy. Page *et al. v.* Sun Ins. Co., 74 Fed. 203. Otherwise the value of the specific property determines. Erb *v.* Fidelity Ins. Co., 99 Iowa 727.

[9] There is some conflict as to whether fidelity insurance is properly suretyship or insurance. See RICHARDS, INSURANCE LAW, 655; VANCE, INSURANCE, §§ 247–248.

[10] The general policy covered loss of securities, negotiable paper or currency, on or off the premises, by robbery, theft, fire, embezzlement, burglary, or negligence or fraud of employees.

The presence of such lesser policy cannot alter the nature of the more extensive insurance.[11] The risk of the latter is comparatively greater, but that is an incident of the size of the obligation assumed, for which the insurer presumably exacts a greater reward.[12] Nor is the fact that the loss was first paid by a co-surety a reason for lightening the burden undertaken by the more general policy.

From a practical viewpoint, it is evident that the nature of this risk renders it peculiarly difficult to limit the amount at hazard on this one item, as may be done in fire insurance by showing the value of the specific thing. Conceivably this one employee might have stolen £40,000, for which the policy would have been liable.[13] In the absence of proof that his opportunities to misappropriate were restricted, the ratio would necessarily be 2500 to 193,600. An appearance of unfairness in that result seems to have been the controlling ground of the decision.

JURISDICTION OVER FOREIGN VESSELS. — Over foreign public vessels in its ports every nation is understood to waive the exercise of its territorial jurisdiction.[1] This concession, based on international courtesy and not a matter of right,[2] is made because it is not to be considered that a vessel, representing the dignity and sovereign power of an independent state, and its crew as public functionaries, would submit to another authority.[3] Though the extent of this concession is still in dispute, the difference is for the most part one of terminology rather than of substance. Most writers assert that such a vessel is to be treated as part of the territory of its sovereign, agreeing, however, that it must commit no act of aggression and must respect the local port regulations.[4] The latest writers oppose this doctrine of extraterritoriality as an inaccurate and confessedly misleading [5] fiction, but they admit that the vessel and crew are to be regarded as not subject to the territorial jurisdiction.[6] The latter view, sounder in theory, is probably the one actually applied by the nations.[7] On the other hand, in regard to foreign private ships in port there is a difference in practice rather than in theory. It seems

[11] See GRISWOLD, FIRE UNDERWRITERS' TEXT-BOOK, § 2079.

[12] See *id.*, § 1545.

[13] Cromie *v.* Kentucky & Louisville Mutual Ins. Co., *supra.*

[1] The Schooner Exchange *v.* M'Faddon, 7 Cranch (U. S.) 116.

[2] See The Santissima Trinidad, 7 Wheat. (U. S.) 283, 353. Since this exemption is based on toleration the sovereign of the port might revoke it and exclude or expel such vessels or, conceivably, attempt to submit them to its jurisdiction — with the necessity of answering to the sovereign of the vessel for such acts. See PRADIÈR-FODÉRÉ, DROIT INTERNATIONAL PUBLIC, § 2405; 2 MOORE, DIGEST OF INTERNATIONAL LAW, § 253.

[3] See 3 CALVO, LE DROIT INTERNATIONAL, 337. *Cf.* M'Culloch *v.* Maryland, 4 Wheat. (U. S.) 316; Dobbins *v.* Commissioners of Erie Co., 16 Pet. (U. S.) 435.

[4] See ORTOLAN, DIPLOMATIE DE LA MER, 212; LAW MAG. AND REV., No. 219, p. 201.

[5] See ORTOLAN, DIPLOMATIE DE LA MER, 212.

[6] See HALL, INTERNATIONAL LAW, 3 ed., 191; PRADIÈR-FODÉRÉ, DROIT INTERNATIONAL PUBLIC, §§ 2401, 2403; PIETRI, LA FICTION D'EXTERRITORIALITÉ, 364.

[7] See 2 Mich. L. Rev. 347. There is some authority, however, for saying that the local jurisdiction over criminals is not ousted by their escape to a foreign war-vessel. See REPORT OF ROYAL COMMISSION ON FUGITIVE SLAVES; 1 Op. Atty. Gen. 47.